

STAFF REPORT—Ad Hoc Committee on Pilot Diversity
Recommended changes to the Trainee Selection Exam Regulations

SUMMARY

On June 21, 2021, Board staff received a copy of a letter addressed to Board President Joanne Hayes-White requesting that the Board consider changing certain Trainee Training Program Selection Examination minimum eligibility requirements and revising the exam process.

RELEVANT BOARD REGULATIONS:
§ 213, TRAINING PROGRAMS

(e) To meet minimum eligibility requirements, each applicant must:

(3) Provide documentation, consisting of either (1) certificates of discharge or (2) declarations complying with Code of Civil Procedure section 2015.5 by both the applicant and the person verifying the experience, that demonstrates performance as master for:

(A) one year in command of a self-propelled vessel in navigation of not less than 1600 gross tons; or

(B) while holding, at minimum, a current, valid federal license as master of vessels of not more than 1600 gross tons, two years in command of either (1) a towing vessel of not less than 99 gross tons engaged in ship assist or in bay or ocean towing, or (2) a towing vessel of less than 99 gross tons in which the combined gross tonnage of the towing vessel and the vessel(s) towed is not less than 1600 gross tons.

...and

(h) All applicants meeting the minimum eligibility requirements in subsection (e) above will be permitted to take a written examination developed and administered by the Board with the assistance of one or more contractors with psychometric qualifications equivalent to the State of California's Test Validation and Development Specialist personnel classification, and who shall utilize a criterion-referenced methodology to establish a passing score for that examination. The passing score reflects the lowest score that a candidate could obtain and meet minimum competence standards. An applicant must achieve a passing score on the written examination in order to be eligible to proceed further in the selection process.

(i) Applicants must be selected for and pass a bridge simulator exercise which tests skills required for ship navigation in piloting waters that cannot be adequately tested in a written examination alone. These include the applicant's ability to assimilate and assess a variety of information in a bridge environment, to plan and execute timely, appropriate responses in both routine and emergency situations, and to communicate effectively both with those on the bridge and those outside the ship. Local knowledge is not required and will not be tested.

(1) The applicant's performance in the bridge simulator exercise will be evaluated by three

evaluators selected by the Board: one from the Board's Pilot Evaluation Committee, one who is a state licensed pilot from another jurisdiction and one who is an industry representative with current or prior command on deep draft vessels. The evaluators will be trained with the assistance of one or more psychometricians meeting the qualifications set forth in subsection (h).

(2) The following seven elements will be evaluated during the bridge simulator exercise:

(A) Situational awareness

Assesses the applicant's appreciation of the situation the vessel is in at all times during the exercise, including relative motion, traffic, aids to navigation, effect of wind, current and other forces on the vessel, and ability to accurately filter and prioritize available information.

(B) Appropriate response

Assesses the applicant's response in routine transit including timeliness and appropriateness of rudder commands, engine orders and other orders to the bridge team.

(C) Ability to respond correctly under stress

Separately assesses the applicant's ability to respond under emergency or non-routine situations of increased stress.

(D) Communication and bridge presence

Assesses the applicant's ability to use concise, clear and pertinent communications using proper terminology in communicating with the bridge and evaluation teams and on the radio, and assesses the applicant's professional composure, demeanor and ability to communicate warranted self-confidence which inspires confidence in the rest of the bridge team that the vessel's navigation is in good hands.

(E) Fundamental shiphandling

Assesses the applicant's knowledge of proper and timely use of engine and rudder commands and understanding of the ship's response to those commands.

(F) Bridge resource management

Assesses the applicant's proper use of all personnel and equipment resources available during the exercise.

(G) Rules of the road

Assesses the applicant's proper application of the navigational rules of the road to the situations presented.

(3) The exercise will be videotaped and recorded with sufficient detail to allow for meaningful review.

(4) An applicant must achieve a passing score on the bridge simulator exercise to be qualified to compete for final selection. The passing score will be established with the assistance of one or more psychometricians meeting the qualifications in subsection (h), and who shall utilize a criterion-referenced methodology to establish a passing score for that examination. The passing

score reflects the lowest score that a candidate could obtain and meet minimum competence standards.

(j) Final selection for entry into the training program shall be based on the combined scores from the applicant's experience points, written examination and bridge simulator exercise, with each given equal weight, in accordance with the following procedures:

(1) All applicants achieving passing scores on both the written examination and the bridge simulator exercise shall be placed on an eligibility list in order of their combined scores, highest score first.

(2) The eligibility list may be used by the Board to fill openings in the training program for up to three years from the date the list is accepted by the Board.

SFBP SUGGESTED CHANGES

1. That the minimum eligibility requirement for “one year in command of a self-propelled vessel in navigation of not less than 1600 gross tons” be revised to “two years sailing in the capacity of Chief Mate of vessels not less than 1600 gross tons and holds an Unlimited Masters License.”
2. That the Board add eligibility, currently not in regulation, for a commercial pilot in another jurisdiction to qualify for our exam. The proposal is as follows: 365 working days as a full-time commercial pilot, not a member of the crew, directing and controlling the movement of vessels of not less than 1600 gross tons in waters in which a pilot is required by state, federal or foreign law and holds, at minimum, a 1600-ton Masters License.
3. That the eligibility for towing experience be relaxed from the current standard – “while holding, at minimum, a current, valid federal license as master of vessels of not more than 1600 gross tons, two years in command of either (1) a towing vessel of not less than 99 gross tons engaged in ship assist or in bay or ocean towing, or (2) a towing vessel of less than 99 gross tons in which the combined gross tonnage of the towing vessel and the vessel(s) towed is not less than 1600 gross tons” - to “In command of a towing vessel greater than 50 gross tons engaged in ship assist or in command of a towing vessel greater than 50 gross tons engaged in towing where the tug and tow are combined to be greater than 1600 gross tons.” This eliminates the “while holding” requirement, wherein the candidate would have to have obtained a 1600-ton Masters License prior to accumulating the two-years’ experience, and reduces the required tonnage of the tug to “greater than 50 tons.”¹
4. Lastly, SFBP requests that the exam be modified to add an oral interview as follows: Applicants who pass the written and simulator exam will be interviewed by a panel comprised of one public board member, one industry board member, one pilot board member and a representative of CalHR. Interview results will account for 25% of the total score (25%

¹ This change is consistent with the decision of the 2019 Selection Appeals Committee with respect to allowing equivalent experience from a vessel of lesser tonnage.

written exam score, 25% simulator exam score, 25% experience score and 25% interview score).

DISCUSSION

The letter requesting consideration of these changes to the selection exam process was first introduced to the Board at the June 23, 2021 Board meeting as part of the Executive Director correspondence.

The letter was later discussed under agenda item #21 – Proposals for the next Board meeting agenda. During that discussion, President Hayes-White stated that she would work with Board staff to have a committee meet on the matter. SFBP Business Director McIntyre stated that this is a high priority for SFBP and if the changes are not achieved prior to the next scheduled exam, the next opportunity for change would be three years away.

Executive Director Garfinkle supported the move for more diversity, but expressed concern about adding an interview to an exam format and process that was created in response to a class-action lawsuit where the Board was the defendant and lost. He stated that Board staff would work with CalHR to discuss the suggestions, but also noted that regulatory changes would be necessary to effect these changes and that the window of time remaining before advertising the next exam is closing.

Also, during that discussion, Commissioner Carr noted that SFBP has been working on diversity outreach for the past six years and has determined that the regulations as written are limiting the potential pool of candidates. He added that the mentioned concerns can be discussed at the committee level and that SFBP personnel have met with CalHR and discussed the suggested changes.

During this discussion, both Commissioners Schmid and Nyborg mentioned that diversity was a topic of their confirmation interviews. Commissioner Schmid was selected as the Chair of a committee to explore these changes.

At the July 22, 2021 Board meeting, under agenda item #5 – President Announcements and Activities, President Hayes-White named Commissioners Schmid, Tynan, Carr and Prada to a committee to explore the suggested changes. Deputy Secretary Dougherty stated that CalSTA is interested in assisting with this effort and volunteered agency administrative support.

During this discussion, Commissioner Nyborg expressed concern with the tight timeline due to the regulatory changes necessary and suggested the exam be postponed to allow time for these changes to be achieved. Commissioner Tynan added that her confirmation interview focused heavily on achieving diversity amongst the pilots. Executive Director Garfinkle reported that a committee meeting would be scheduled for August 3, 2021.

The Ad Hoc Committee on Pilot Diversity met on August 3, 2021, with Commissioner members Schmid, Tynan, Prada and Carr. Also present was CalSTA Deputy Secretary Dougherty, CalSTA Deputy Secretary Avital, SFBP Business Director McIntyre, and Board staff.

During the meeting, Commissioner Carr offered a draft mission statement. During the discussion of this mission statement, Board Counsel Eagan suggested seeing the draft mission statement in writing prior to a vote, and the committee deferred action on a mission statement to a later meeting.

The Committee discussed the regulatory process and the associated timeline. Executive Director Garfinkle summarized the regulatory process, which includes a mandatory 45-day comment period, and a 30-day Office of Administrative Law (OAL) review. He opined that under the best of circumstances, regulatory changes would take a minimum of three months, but more likely six.

Commissioner Carr inquired about the possibility of expediting the regulatory timeline by expressing these changes as emergency regulations. Board Counsel Eagan opined that emergency authorization would not apply in this situation. Executive Director Garfinkle noted that OAL documents state that it would not be considered an emergency if the situation was of the agencies own making. He read from the OAL instructions of what defines an emergency: “the situation calls for immediate action to avoid serious harm to the public, the public peace, health, safety, or general welfare.”

Executive Director Garfinkle also reminded the Committee that the basis for the class-action lawsuit from 1996 that led to the current exam format was a biased interview process, and the result was that the Board, as a part of that settlement, agreed to revise its selection exam process and pay monetary damages to the class members.

The Committee move on from a discussion of the regulatory process to the suggested changes to the selection exam process. The bulk of the discussion concerned the addition of an interview to the selection exam.

Captain McIntyre offered that an interview might be beneficial in discovering qualities a candidate possesses that might not be apparent from their application or the existing testing process.

Executive Director Garfinkle reported to the Committee that in his discussions with CalHR, his impression was that they felt reducing the minimum qualifications to take the exam would do more to foster diversity than adding an interview. He added that, while changing the minimum qualifications was a relatively simple regulatory exercise, adding an interview – with all the associated selection exam changes – was a more difficult challenge.

A portion of the Committee meeting was devoted to discussing the need to add diversity and the challenges faced in doing so.

In an effort to better define the suggested interview process, Captain McIntyre explained that the idea was to add the interview following the simulator exercise, and that candidates who pass both the written exam and simulator exam, be invited to interview. She added that this might offer a

chance for the candidates to provide reasoning for some of their decision making in the simulator.

Board Counsel Eagan commented that while the Committee seems interested in adding an interview, because of past litigation, the change must be done right, with the appropriate input from CalHR. He added that with CalHR working on the interview process, it will take time. He asked the Committee to consider changing only the minimum qualifications and considering the interview process for future selection exams. Finally, he noted that he did not see the 1996 lawsuit as barring the Board from adding an interview, as long as it is done properly with guidance from CalHR.

The Committee then went on to discuss each of the suggested changes to the minimum qualifications.

- That the minimum eligibility requirement for “one year in command of a self-propelled vessel in navigation of not less than 1600 gross tons” be revised to “two years sailing in the capacity of Chief Mate of vessels not less than 1600 gross tons and holds an Unlimited Masters License.”

It was noted that the size of the American merchant fleet has significantly declined in recent years, resulting in reduced opportunities to gain experience in command. Allowing those with Chief Mate experience will significantly open the selection exam to a wider pool of deep-sea mariners.

- That the Board add eligibility, currently not in regulation, for a commercial pilot in another jurisdiction to qualify for our exam. The proposal is as follows: 365 working days as a full-time commercial pilot, not a member of the crew, directing and controlling the movement of vessels of not less than 1600 gross tons in waters in which a pilot is required by state, federal or foreign law and holds, at minimum, a 1600 Ton Masters License.

The Committee agreed with this change, which will allow pilots from other jurisdictions to participate in our selection exam, which was not previously available to them.

- That the eligibility for towing experience be relaxed from the current standard – “while holding, at minimum, a current, valid federal license as master of vessels of not more than 1600 gross tons, two years in command of either (1) a towing vessel of not less than 99 gross tons engaged in ship assist or in bay or ocean towing, or (2) a towing vessel of less than 99 gross tons in which the combined gross tonnage of the towing vessel and the vessel(s) towed is not less than 1600 gross tons” - to “In command of a towing vessel greater than 50 gross tons engaged in ship assist or in command of a towing vessel greater than 50 gross tons engaged in towing where the tug and tow are combined to be greater than 1600 gross tons.” This eliminates the “while holding” requirement, wherein the candidate would have to have obtained a 1600-ton Masters License prior to accumulating the two-years’ experience, and reduces the required tonnage of the tug to “greater than 50 tons.”

This change will allow a greater range of tug operators to qualify for our selection exam and this change will incorporate actions taken by the 2019 exam Selection Appeals Committee allowing experience from a operator whose experience was deemed equivalent, albeit on a tug of less than the tonnage cutoff stated in the regulations. It also eliminates the “while holding” requirement, thereby opening up the selection exam to a greater pool of candidates.

The Ad Hoc Committee on Pilot Diversity met again on August 17, 2021, to review suggested language for the tug tonnage, which was rewritten after the August 3, 2021 meeting. The new language clarifies some semantic concerns expressed in the August 3, 2021 meeting. The Committee also agreed to strongly suggest to the California Department of Human Resources (CalHR) that the interview process be given 25% of the exam weight, but would like to receive feedback on the appropriateness of that number. It was noted that the interview process could be put into regulation without many of the specifics by noting that the interview process would be developed and administered by the Board with the assistance of one or more contractors with psychometric qualifications equivalent to the State of California's Test Validation and Development Specialist personnel classification within the California Department of Human Resources.

The Committee voted to adopt all five elements of the SFBP suggested changes. No decision was made on delaying the exam at this time. The Committee decided to track the regulatory process closely and make a decision on exam timing based on regulatory progress.

ISSUES FOR BOARD DELIBERATION AND DECISION

The Committee will recommend to the Board to accept all the policy changes necessary to implement the SFBP suggestions into regulations. If the Board accepts all or part of the policy recommendations of the Committee, Board staff will commence the regulatory process.